

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,

v.

EL SHAFEE ELSHEIKH,
Defendant.

Case No. 1:20CR239-2

Honorable T.S. Ellis, III

Trial: March 29, 2022

**MEMORANDUM IN SUPPORT OF MOTION TO PARTIALLY SEAL/REDACT
RESPONSE TO GOVERNMENT’S MEMORANDUM REGARDING ADMISSIBILITY
OF OUT-OF-COURT STATEMENTS**

Defendant, EL Shaffee ElSheikh, moves this Honorable Court, pursuant to Local Crim. R. 49 for entry of an Order permitting his Response to Government’s Memorandum Regarding Admissibility of Out-of-Court Statements to be filed partially under seal. Sealing is necessary because it contains confidential information covered by a Protective Order and to protect Mr. ElSheikh’s right to a fair trial.

ARGUMENT

Defendant’s Response to Government’s Memorandum Regarding Admissibility of Out-of-Court Statements should be partially sealed/redacted because it contains confidential information that is covered by a Protective Order and because it contains information the public and the jury might not be entitled to see. It is true that judicial proceedings are generally open to the public and that there exists, while not a First Amendment right, a common law right of public access to judicial records and documents. *Media Gen. Operations, Inc. v. Buchanan*, 417 F.3d 424, 429 (4th Cir. 2005) (citing *Balt. Sun Co. v. Goetz*, 886 F.2d 60, 64-65 (4th Cir. 1989)). The presumption of the right of access can be rebutted if countervailing interests heavily outweigh the public interests in access. *Virginia Dep’t of State Police v. Washington Post*, 386 F.3d 567,

575 (4th Cir. 2004). The party seeking to overcome the presumption bears the burden of showing some significant interest that outweighs the presumption. *Id.* at 575. Ultimately the decision to seal is a matter best left to the sound discretion of the district court. *Washington Post*, 386 F.3d at 575.

Partial sealing/redaction is necessary to protect the confidential information contained in the Response until such time as the Court rules on its admissibility as evidence at trial.

WHEREFORE, Defendant respectfully requests that the Court enter an Order permitting Defendant's Response to Government's Memorandum Regarding Admissibility of Out-of-Court Statements to be filed partially under seal.

Respectfully submitted,

EL SHAFFEE ELSHEIKH
By Counsel

/s/

Nina J. Ginsberg (#19472)
Zachary Deubler (#90669)
DiMuroGinsberg, P.C.
1101 King Street, Suite 610
Alexandria, VA 22314
Telephone: (703) 684-4333
Facsimile: (703) 548-3181
Email: nginsberg@dimuro.com
Email: zdeubler@dimuro.com

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March 2022, I filed the foregoing pleading through the ECF system, which shall then send an electronic copy of this pleading to all parties in this action.

/s/

Zachary A. Deubler, Esq.